

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

JOSHUA NIEVES MARQUEZ, by and
through his parents JESUS
NIEVES and LEONOR MARQUEZ, and
on their own behalf,

Civil No. 02-2480 (JAF)

Plaintiffs,

v.

COMMONWEALTH OF PUERTO RICO;
DEPARTMENT OF EDUCATION,
through its Secretary, Hon.
César Rey; ELSIE TRINIDAD;
EDNA ROSA COLON,

Defendants.

O R D E R

Plaintiffs, Joshua Nieves Márquez ("Joshua"), a developmentally-delayed and hearing-impaired teenager who attends public school in Puerto Rico, and his parents, brought the present action against Defendants, the Commonwealth of Puerto Rico; the Department of Education, through its Secretary, César Rey; the Director of the María Bas de Vázquez School, Elsie Trinidad; and the Director of the Bayamón Region of the Department of Education, Edna Rosa Colón. Docket Document No. 1. Plaintiffs alleged violations of the Individuals with Disabilities in Education Act ("IDEA"), 20 U.S.C. §§ 1400-1487 (1994 & Supp. 2004); the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12165 (1994 & Supp. 2003); the Rehabilitation Act, 29 U.S.C. §§ 701-796 (1994 & Supp. 2004); th

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1 Civil Rights Act of 1964, 42 U.S.C. § 2000 (1998 & Supp. 2002); 42
2 U.S.C. § 1983 (1998 & Supp. 2004); and Puerto Rico law, for
3 Defendants' failure to provide Joshua with a sign-language
4 interpreter ordered for him several months earlier by a hearing
5 officer. Defendants replied to suit by arguing that the federal
6 court lacked jurisdiction under the Eleventh Amendment. Docket
7 Document No. 10. They also sought dismissal of the case on grounds
8 of untimeliness, exhaustion, and lack of statutory standing, and said
9 that the conditions for preliminary injunctive relief had not been
10 met. After hearing the evidence, we granted the preliminary
11 injunction and denied Defendants' motion to dismiss. Docket Document
12 No. 12. Defendants appealed our ruling, Docket Document No. 17,
13 which the First Circuit Court of Appeals affirmed. Nieves-Márquez v.
14 Puerto Rico, 353 F.3d 108 (1st Cir. 2003).

15 This case was the subject of a trial on the merits which ended
16 October 15, 2004. The parties reached a settlement that was to be
17 implemented through an order entered on October 27, 2004, Docket
18 Document No. 66.

19 Almost one year after the trial and settlement, the Defendants
20 are still squabbling and refusing to fully meet their obligations
21 under the stipulations. See Docket Document No. 66, p. 3, ¶¶ 3-4.

22 The court expressly retained jurisdiction over any and all
23 aspects of the settlement process. A hearing was held on
24 September 20, 2005. To our surprise, Defendants reneged and

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1 pretended to get away with noncompliance of its stipulated
2 obligations. We specifically ordered the payment of all line items
3 chargeable to Defendants under penalty of civil contempt and threat
4 of execution of judgment.

5 This Order outlines which items are to be paid by Defendants,
6 and which items are to be paid from the settlement moneys deposited
7 with the court for the benefit of the minor Plaintiff. See Docket
8 Document No. 66, pp. 2-3, ¶¶ 1-2.

9 **Payments to be Made by Defendants**

10 1. Dr. Raúl Vilá Ramírez' March 10, 2005, invoice for \$65.00.

11 2. Dr. Raúl Vilá Ramírez' May 5, 2005, invoice for \$65.00.

12 **Total payable to Dr. Vilá Ramírez: \$130.00.**

13 3. Programa de Asistencia Tecnológica ("PRAT"), University of
14 Puerto Rico - Invoice dated April 11, 2005, for **\$150.00.**

15 4. Héctor Noel Torres, Puerto Rico Opportunity Program
16 ("PROP") - Invoice dated June 9, 2005, for **\$50.00.**

17 5. María de los Angeles Rosa, Special Education Teacher,
18 Academic and Speech Reading Evaluation - Invoice dated
19 August 5, 2005, for **\$910.00.**

20 6. Aida Luz Matos, Court Monitor - Balance due as of
21 February 15, 2005, in the amount of \$5,100.00.

22 7. Aida Luz Matos, Court Monitor - Balance due on Invoice
23 dated March 28, 2005 for \$1,500.00.

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8. Aida Luz Matos, Court Monitor - Invoice dated September 1, 2005, for \$600.00.

Total Payable to Court Monitor Aida Luz Matos: \$7,200.00.

Payments to be Made by Plaintiffs and/or Shared

9. Regarding the equipment for home use recommended by PRAT, totaling **\$4,285.00**, the payment will be made chargeable to Plaintiffs' funds deposited with the court. See Docket Document No. 66, producing party 2-3 ¶¶ 1-2.

10. Regarding the hearing aids ordered by Dr. Raúl Vilá Ramírez, we note that this digital equipment substitutes a previous analog set of hearing aids provided by Defendants, which was useless due to constant malfunction. The cost of the new set, **\$6,500.00**, shall be chargeable **50%** to the Defendants (\$3,250.00) and **50%** (\$3,250.00) to Plaintiffs' funds deposited with the court. Any further purchases or improvements related to this equipment will be chargeable to Plaintiffs. This is the best equitable distribution of the cost of this item. On the one hand, the Defendants failed in their original obligation to provide the proper hearing aids that have the special "boot" to match with the FM-System that the Defendants' school must provide to Plaintiff's teachers. On the other hand, Plaintiff and his parents have agreed in the stipulation for settlement that

